

To: "Belin, Letty" [Letty_Belin@ios.doi.gov]; Nawi, David" [David_Nawi@ios.doi.gov]
From: "Poole, Kate"
Sent: Thur 12/9/2010 10:56:24 PM
Subject: FW: Comments on Natural Resources Agency's draft BDCP document

Fyi.

From: Obegi, Doug
Sent: Thursday, December 09, 2010 12:16 PM
To: 'karla.nemeth@resources.ca.gov'
Cc: Poole, Kate; Nelson, Barry
Subject: Comments on Natural Resources Agency's draft BDCP document

Dear Karla,

Thank you for including NRDC in your briefing on the Natural Resources Agency's forthcoming BDCP document. I am sorry that I personally could not attend, but greatly appreciate allowing us to participate. However, we are disappointed that the Natural Resources Agency has chosen to use this document to express its viewpoints on how to resolve certain unresolved issues in BDCP, rather than identifying a process for resolving these issues and successfully completing BDCP. We believe the latter course of action would be far more productive, and would complement the approach to resolving the major issues that we outlined in our joint letter dated December 1, 2010.

That joint letter explains why NRDC believes that many of the conclusions in this document are premature and unwarranted, and lays out a path for resolving those issues. Unfortunately, we fundamentally disagree with many of the conclusions in this draft document, including:

- CEQA/NEPA Alternatives: The document (page 77) asserts that this range of alternatives represents the consensus of the state and federal agencies. That conclusion is inaccurate, as it does not reflect a consensus with federal agencies, nor does it reflect the consensus of State agencies. As you know, the State Water Resources Control Board has repeatedly submitted formal CEQA comments that BDCP must consider alternatives that reduce exports as compared to the current biological opinions, and the Delta Stewardship Council has similarly commented that BDCP must reduce reliance on the Delta and meaningfully consider the SWRCB's Delta flow criteria. Likewise, the range of alternative identified in the document fails to comply with the requirements of the Delta Reform Act (Water Code § 35320(b)(2)). The document should be revised to acknowledge the need to analyze a broader range of alternatives, including alternatives that reduce exports as compared to the current biological opinions. Such analysis has not yet been undertaken in BDCP to our knowledge, despite allegations to the contrary from some water users.

- Omission of the SWRCB: The document (pages 6-7) improperly omits discussion of the State Board's

role in reviewing and approving BDCP, both in terms of the permit for a change in point of diversion as well as with respect to the periodic update of the Bay Delta Water Quality Control Plan. Similarly, the document acknowledges that BDCP has wholly failed to address the broader suite of water quality and flow issues in the Delta (page 10). The document should be revised to acknowledge the authority of the State Board, and the need for BDCP to address these broader flow issues.

· Operations/Effects Analysis: While the document acknowledges that subsequent operational parameters have been modeled recently, the range of alternatives identified on page 77 relies on a suite of operational measures that the federal agencies have concluded may cause jeopardy, and which the NGOs and fishery agencies have repeatedly warned are inadequately protective. The document also does not address how BDCP will incorporate and consider the SWRCB's Delta Flow criteria, as required by the Delta Reform Act. Water Code § 85086(c)(1). Likewise, the discussion of the effects analysis fails to acknowledge these conclusions, nor does it acknowledge the fundamental flaws in the effects analysis process that all parties acknowledged in the Principals Process. The document should be revised to admit the substantial flaws in the effects analysis, and to acknowledge the need to revise operational parameters before selection of CEQA/NEPA alternatives.

Not surprisingly, on a number of other issues we believe that the document does not reflect the consensus of the steering committee, does not rely on the best available science, and does not comply with other requirements of law (e.g., quantifiable biological objectives, adaptive management, regulatory assurances, governance structure). We strongly encourage the Natural Resources Agency to confer with the SWRCB, the Delta Stewardship Council, and other agencies to revise the document in a manner that lays out a process for resolving these issues in BDCP, rather than simply laying down this marker.

Thank you again for briefing us on this document, and please let us know if you have any questions or would like to discuss this further.

Sincerely,

Doug

Doug Obegi

Staff Attorney

Water Program

Natural Resources Defense Council

111 Sutter Street, 20th Floor

San Francisco, CA94104

415.875.6100 (phone)

415.875.6161 (facsimile)